

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

SHAWN LOUIS SUTTER, §
Plaintiff, §
v. § Civil Case No. 5:22-CV-8-RWS-JBB
MERRICK GARLAND, ET AL., §
Defendants. §

ORDER

Plaintiff Shawn Sutter, proceeding *pro se* but not *in forma pauperis*, filed the above captioned action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff sued Defendants, a number of federal officials, in their individual and official capacities. Plaintiff was ordered to effect service of process upon the Defendants and requested that the U.S. Marshal Service be designated to serve process for him, as provided in Federal Rule Civil Procedure 4(c)(3). This motion was granted on September 16, 2022 and the order advised Plaintiff how federal defendants are properly served in view of Federal Rule of Civil Procedure 4(1). Docket No. 24). The Clerk was directed to send Plaintiff the appropriate summons forms and Plaintiff was directed to contact the U.S. Marshal Service to ascertain the fees for effecting service. *Id.*

After hearing nothing further from Plaintiff, the Magistrate Judge issued a report on December 28, 2022, recommending that the lawsuit be dismissed without prejudice for failure to effect service and failure to prosecute or to obey an order of the Court. Docket No. 25. The Report noted that the U.S. Marshal Service had advised the Court that Plaintiff did not contact them regarding service or the attendant fees. *Id.* A copy of this Report was sent to Plaintiff at his last known address on December 29, 2022, but no objections have been received.

The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *See Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 421 and n.9 (5th Cir. 2019) (citations omitted). Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings and the Report of the Magistrate Judge. Upon such review, the Court has determined the report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") Accordingly, it is

ORDERED that the report of the Magistrate Judge (Docket No. 25) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-captioned civil action is **DISMISSED WITHOUT PREJUDICE** for failure to effect service and failure to prosecute or to obey an order of the Court. It is further

ORDERED that the Clerk shall send the Plaintiff a copy of the Magistrate Judge's report (Docket No. 25) along with this order. If Plaintiff in fact did not receive a copy of the report, he may present any objections he may have to the report or this order by filing a motion for reconsideration under Fed. R. Civ. P. 59(e) (within 28 days of the entry of final judgment) or Fed. R. Civ. P. 60(b) (after 28 days from the entry of final judgment). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 14th day of February, 2023.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE